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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 CR 95 (AJN)

5 HAKEEM CAMPBELL,

6 Defendant.

7 -----x

8 New York, N.Y.
9 November 28, 2017
3:00 p.m.

10 Before:

11 HON. ALISON J. NATHAN,

12 District Judge

13
14 APPEARANCES

15 JOON H. KIM
16 Acting United States Attorney for the
17 Southern District of New York
HAGAN SCOTTEN
Assistant United States Attorney

18 KORIBANICS & KORIBANICS
19 Attorneys for Defendant
MICHAEL KORIBANICS

HBSTCAMS

(In open court, case called)

MR. SCOTTEN: Hagan Scotten for the government.

THE COURT: Good afternoon, Mr. Scotten.

And for the defendant?

MR. KORIBANICS: Good afternoon, Judge, my name Michael Korbanics. I've been appointed pursuant to CJA representing Mr. Campbell, present in court in custody, seated to my right.

THE COURT: Good afternoon, Mr. Korbanics. Good afternoon, Mr. Campbell.

THE DEFENDANT: Good afternoon, your Honor.

THE COURT: Please be seated.

We're here for sentencing today in United States versus Campbell, 15 CR 95. In preparation for today's proceeding, I have reviewed the probation report, which is dated November 7, 2017. I have also received and reviewed the following additional submissions: I have the defendant's submission dated November 20, 2017. It has as attachments a number of letters from family members and friends of Mr. Campbell. I have the government's submission, which is dated November 22nd, 2017, and then I have the supplemental submission on behalf of Mr. Campbell that was submitted yesterday, November 27, 2017, and that consists of two additional letters in support of Mr. Campbell as well as a certificate of achievement from a course at MCC.

HBSTCAMS

1 Counsel, is there anything else I should have in front
2 of me for purposes of today's sentencing?

3 MR. SCOTTEN: No, your Honor.

4 MR. KORIBANICS: No, Judge.

5 THE COURT: Can you confirm that you received each
6 other's submissions?

7 MR. SCOTTEN: Yes, your Honor.

8 MR. KORIBANICS: Yes, I have, Judge.

9 THE COURT: Thank you. Turning first to the
10 presentence report, Mr. Korbanics, for the record, have you
11 reviewed the presentence report and discussed it with your
12 client?

13 MR. KORIBANICS: Yes, I have, judge.

14 THE COURT: Mr. Campbell, did you have an opportunity
15 to review the presentence report and discuss it with your
16 attorney?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And Mr. Scotten, for the record, have you
19 reviewed the presentence report?

20 MR. SCOTTEN: Yes, your Honor.

21 THE COURT: Counsel, setting aside for a moment the
22 calculation of the sentencing guidelines, are there any
23 objections to the report regarding factual accuracy?

24 MR. SCOTTEN: No, your Honor.

25 MR. KORIBANICS: No, your Honor. Judge, there was one

HBSTCAMS

1 that submitted, it was just it says the Virgin Islands instead
2 of Jamaica, but nothing of any substance, Judge.

3 THE COURT: And that was chanced in the revision?

4 MR. KORIBANICS: Yes, it was, Judge.

5 THE COURT: Hearing no objections, I adopt the factual
6 recitations set forth in the PSR. The report will be made a
7 part of the record in this matter and placed under seal. If an
8 appeal is taken, counsel on appeal may have access to sealed
9 report without further application to this Court.

10 Turning to the guideline calculation, as counsel is
11 aware, I'm no longer required to follow the United States
12 Sentencing Guidelines, but I am still required to consider the
13 applicable guidelines in imposing sentence. I must therefore
14 accurately calculate the sentencing guideline range.

15 In this case, there was a plea agreement to which the
16 parties stipulated to a particular calculation of the
17 guidelines. Counsel, am I correct that the calculation in the
18 PSR is in accord with that agreement?

19 MR. SCOTTEN: Yes, your Honor.

20 MR. KORIBANICS: Yes, Judge.

21 THE COURT: And I presume, but I will ask, any
22 objections to that calculus?

23 MR. SCOTTEN: No, your Honor.

24 MR. KORIBANICS: No, Judge.

25 THE COURT: Based on the parties' agreement and the

HBSTCAMS

1 absence of objection, my independent evaluation of the
2 sentencing guidelines, I accept the guidelines calculation in
3 the PSR. Accordingly, using the November 1st, 2017 edition of
4 the sentencing guidelines, I do find that the offense level is
5 29, the criminal history category is three, and that produces a
6 guideline range of 108 to 135 months imprisonment. I note that
7 probation recommends a sentence at the bottom of the guidelines
8 of 108 months.

9 Counsel, I believe your agreement also -- you also
10 agreed not to seek an upward or downward departure within the
11 advisory system, is that correct?

12 MR. SCOTTEN: Yes, your Honor.

13 MR. KORIBANICS: Yes, Judge.

14 THE COURT: Nevertheless, I have considered whether
15 there's an appropriate basis for departure within the
16 guidelines system and did not find any grounds warranting a
17 departure. Your agreement left open the possibility of arguing
18 for a variance, as defense counsel has done in his written
19 submission.

20 I will hear from counsel as to their arguments
21 regarding a reasonable sentence, taking into account the
22 3553(a) factors and beginning with the government, Mr. Scotten.

23 MR. SCOTTEN: Yes, your Honor. You have our
24 submission, I won't expand at length. Mr. Campbell is a core
25 member of a violent gang who personally committed acts of

HBSTCAMS

1 violence. We don't see any reason that the Court should depart
2 from the guidelines. I think the arguments in defense
3 counsel's submission shouldn't persuade the Court. For the
4 reasons stated in our submission, essentially many people face
5 hard upbringings, they do not do what Mr. Campbell did.

6 I want to take a second to note, I think the Court
7 only sees defendants in this case because they come before the
8 Court and you get the full holistic analysis of a PSR. In the
9 course of investigating this case, the government had the
10 privilege of interviewing many people, including many young men
11 from this area, and there are many people, as I'm sure the
12 Court already knows, who have faced similar hardships to the
13 defendants, whose hardships are not particularly harsh in the
14 context of this case, and do not commit crimes. Instead,
15 growing up in a neighborhood with someone like the defendant
16 makes it harder for them to do what they want to, make an
17 honest living. That only becomes more difficult when violence,
18 drug dealing, gunplay are at least temporarily rewarded, as in
19 the case of the defendant, who was able to make more money,
20 obtain a higher social position by being violent. And I think
21 that he shouldn't seek the excuse of the circumstances of his
22 upbringing because he's just making it more difficult for other
23 people to escape from the same circumstances.

24 The Court usually asks which other defendants this
25 defendant may be most comparable to. There were two that I

HBSTCAMS

1 thought with worth discussing briefly, one is Shaquille Dewar,
2 and the other is Tyrone Gray. I think Mr. Dewar is probably
3 the nearest comparative, accepting that every defendant is
4 unique and so no one compares precisely. Mr. Dewar was similar
5 to Mr. Campbell, both members of the gang, both repeated
6 arrests for gun possession, both have a single shooting. They
7 are somewhat distinct in that Mr. Dewar's shooting was at an
8 identifiable person, whereas Mr. Campbell was shooting at a
9 house, albeit a house that he choose because he knew a
10 particular person was inside it. So the guidelines are
11 somewhat different there, and Mr. Dewar's were hinged on
12 attempted murder, whereas able defense counsel was able to
13 persuade the government to offer a guidelines hinged on
14 aggravated assault here, but they're really very similar
15 shootings. The guidelines ended up being somewhat similar
16 because Mr. Campbell was a much more profuse drug dealer than
17 Mr. Dewar, and they are just generally quite similar.

18 The Court effectively sentenced Shaquille Dewar to 114
19 months. The sentence was 97 months, but the Court made clear
20 that the Court was taking 17 months off to account for a state
21 sentence that the Bureau of Prisons would not have otherwise
22 have credited. I think that's the best comparative.

23 I also want to mention Tyrone Gray as sort of a
24 bracket in response to defense counsel's argument for a very
25 low sentence. Gray is someone actually close to Mr. Campbell,

HBSTCAMS

1 they did some of the same crimes together, but so far as the
2 evidence we have, sort of less culpable in numerous ways;
3 although certainly associated with a gang, he was not as much
4 of a core member. He sold drugs, but so far as our evidence
5 indicates not to the same volume. He did also possess guns on
6 multiple occasions. And Gray was also implicated in a
7 shooting, but Gray was not the shooter in that case, he was
8 simply in a car with another person who he was in league with
9 and who opened fire. And Gray received an 84-month sentence
10 for what I think could only be described as similar but less
11 severe conduct.

12 So for all those reasons, we submit the defendant
13 should received a within-guidelines sentence. I will rest
14 subject to Court's questions.

15 THE COURT: Okay. Thank you, Mr. Scotten.

16 Mr. Koribanics.

17 MR. KORIBANICS: Thank you, Judge.

18 Judge, I hope I covered most of what I needed to cover
19 in my sentencing memo.

20 THE COURT: I ask you to pull up the microphone, thank
21 you.

22 MR. KORIBANICS: I differ in the government's position
23 about Mr. Campbell's background. There's something about him,
24 Judge, that struck me different, and I think he's maybe -- I
25 think he is, although I don't know the other defendants in this

HBSTCAMS

1 case, I don't have the intimacy that the government has, I
2 represented him, I only represented Mr. Campbell.

3 But of the letters he got, and part of the Court's
4 analysis in sentencing is where will the person go from after
5 his sentencing after release of incarceration? What was
6 interesting to me was that -- he's present with his mom, his
7 dad, his sisters, and his family, is his mother's letter to me
8 was the most telling because it told me something a little
9 different. And I read a lot of letters from mothers, I'm sure
10 you have, most of them always mitigate or say not my son, or
11 this was something that I don't understand. She said that she
12 was always concerned that he was taking the wrong turn, and
13 that they tried to do what they could.

14 But he got caught up at a young age with a -- I don't
15 have to educate the Court as to this group of people who were
16 members and also associates who were in the neighborhood. And
17 his started when he first got -- according to the PSR report,
18 when he first had some physical run-ins and fights and things
19 of that nature, then he got sucked into the street. And he was
20 very candid in the PSR about that, he was interested in the
21 street.

22 But getting back to his mother's letter, what I found
23 most moving about it, and I hope the Court does, is all that
24 aside, and accepting him the way he is and the mistakes he
25 made, they sit here ready to embrace him and give him a

HBSTCAMS

1 positive environment when he comes out, whatever the Court
2 sentences him to today. And I think I speaks volumes, that he
3 will have that support that will make it not as necessary to
4 give a long sentence to.

5 And think what else was moving, Judge, is the letter
6 from his employer, he's got skills. He can go out and make
7 something of himself after he serves his time, whatever it be,
8 from the Court.

9 I would ask that the Court sentence what I requested
10 in my sentencing memorandum, but I also ask the Court to take
11 into consideration those special qualities about Hakeem that
12 will allow him to be a productive member of society, given his
13 young age and the fact that he has this family support.

14 I think that's reflected in the letters. And I don't
15 think Hakeem makes excuses for anything other than he thought
16 that life was glamorous like it's portrayed. Frankly, Judge,
17 when you look at his state court -- it's very difficult for a
18 young man sitting in his seat. And I experienced it as an
19 attorney when you go through the state system and it's slap on
20 the wrist here, probation there, I'm not -- everybody has their
21 numbers, everybody has difficulties in moving cases and the
22 strength of cases and sheer volume.

23 But then you come here, Judge, and you don't even have
24 to speak a word when you walk into this courtroom and realize
25 this is the real deal, and you realize that the government will

HBSTCAMS

1 aggressively prosecute you. When Mr. Campbell, Judge, actually
2 had a -- I'm his second attorney. He had a lower plea offer
3 prior to this and he didn't take it. And he learned about the
4 investigatory powers of the United States government, because
5 that's what sort of spurred on this aggravated assault aspect
6 of relevant conduct here.

7 So I am asking the Court, based on all those
8 surrounding circumstances, to take that into consideration and
9 realize no matter what sentence the Court metes out today in
10 the span of this young man's life, this is real time and this
11 is the first time in his career. And he's got a criminal case
12 history where it's really -- he's facing real time for real
13 events that he has to take responsibility for.

14 And I thank the Court for its time in hearing me. If
15 there's anything I could answer for the Court, I would be happy
16 to answer if I can.

17 THE COURT: Thank you, Mr. Koribanics. I don't think
18 I have additional questions.

19 Mr. Campbell, you don't have to make a statement, but
20 if you would like to, sir, you may do so now. Would you like
21 to?

22 THE DEFENDANT: I would like to say good afternoon,
23 your Honor.

24 THE COURT: Good afternoon.

25 THE DEFENDANT: I would like to say good afternoon to

HBSTCAMS

1 everybody present here. I will ask for time to take the time
2 to take a minute to apologize to my family, and I would like to
3 apologize on behalf of my decisions I made, that I did make bad
4 decisions, and I'm here to accept my decision. I was raised in
5 a good home, I was just carried away by certain wrong decisions
6 in my environment.

7 And with all due respect, I did try to turn around. I
8 did see the road I was going down. I did try to break that
9 certain behavior, try to better myself, I don't want my -- my
10 mother and father was always in my life, I want to do the same
11 thing for my daughter. So with all that said, I seen the
12 destruction, I tried to change. And with very limited
13 education, the best opportunity for me was to get a job in
14 construction, so I took an opportunity in that. And I was on
15 the right path, doing the right thing, and just the bad
16 decisions you do make, it does affect you in the long run.

17 As I stand before you here today, I was a changed
18 person before my incarceration. I was on the right path trying
19 to get my life together, but sad to say that the past does
20 haunt you, and I'm suffering from this right now. So I ask to
21 have a leniency and consideration for me and my family, that I
22 was -- I am a different person, and I was -- I am going to be a
23 different person in society. And I would like to say thank you
24 very much, and that's it.

25 THE COURT: Thank you, Mr. Campbell.

HBSTCAMS

1 Counsel, anything further? Any reason why sentence
2 should not be imposed at this time?

3 MR. SCOTTEN: No, your Honor.

4 MR. KORIBANICS: No, Judge, thank you.

5 THE COURT: As I stated, the guidelines range
6 applicable to this case is 108 to 135 months imprisonment.
7 Under the Supreme Court's decision in *Booker* and its progeny,
8 the guideline range is only one factor that the Court must
9 consider this deciding the appropriate sentence.

10 I'm also required to consider the other factors set
11 forth in 18, USC, Section 3553(a). These include the nature
12 and circumstances of the offense and the history and
13 characteristics of the defendant, the need for the sentence
14 imposed to reflect the seriousness of the offense, to promote
15 respect for the law, to provide just punishment for the
16 offense, to afford adequate deterrence to criminal conduct, to
17 protect the public from further crimes of the defendant, to
18 provide the defendant with needed educational other vocational
19 training. I am seeking to account the kinds of sentences
20 available, as I said, the guideline range, any pertinent policy
21 statement, and the need to avoid unwarranted sentence
22 disparities among defendants with similar records who have been
23 found guilty of similar conduct.

24 I am required to impose a sentence sufficient but no
25 greater than necessary to comply with the purposes I just

HBSTCAMS

1 described. I have given substantial thought and attention to
2 the appropriate sentence in this case in light of the 3553(a)
3 factors and the appropriate purposes of sentencing as reflected
4 in the statute.

5 Mr. Campbell stands convicted of what is a very
6 serious offense. He pled guilty to a count of participating in
7 a racketeering conspiracy in aid of the Big Money Bosses gang,
8 BMB. Mr. Campbell was a vocal, violent, and core member of
9 this street gang. The gang trafficked in narcotics, including
10 crack cocaine, marijuana, and other pills. Members and
11 associates kept firearms and engaged in acts of violence,
12 including shootings, stabbings, and gang assaults. BMB has a
13 violent cultural norm against snitching or cooperating. This
14 gang ravaged the area it occupied with dangerous drugs and
15 violence.

16 As noted, Mr. Campbell was a core member of BMB. He
17 sold crack cocaine and carried guns and engaged in violence on
18 behalf of the gang, and also encouraged others to engage in
19 acts of violence on behalf of the gang. Specifically, he,
20 along with fellow gang members, opened fire on an occupied home
21 of a rival gang member. He determined, prior to the shooting,
22 that the rival was home, that there were people present, and
23 then fired multiple rounds into the home. Thankfully, nobody
24 was injured. Needless to say, any number of people could have
25 been injured or killed as a result of this extraordinarily

HBSTCAMS

1 dangerous and violent conduct. As noted, he encouraged other
2 BMB members to engage in retaliatory acts of violence.

3 Mr. Campbell has criminal history that includes prior
4 narcotics offenses. Troublingly, he did engage in much of this
5 criminal conduct while on bail or probation.

6 Given Mr. Campbell's membership in BMB, his role in
7 the conspiracy, involvement in the sale of a dangerous drug,
8 crack cocaine, and his brazen and dangerous acts of violence
9 and carrying firearms, I have no doubt that a serious sentence
10 is warranted in order to deter Mr. Campbell and others, reflect
11 the seriousness of the offense, promote respect for the law,
12 provide just punishment for the offense, and to protect the
13 public from further crimes of the defendant.

14 Of course, I must and I do take into account the
15 history and characteristics of the defendant.

16 First and foremost, Mr. Campbell pled guilty and has
17 accepted responsibility for his conduct. I found his statement
18 today expressing remorse, at least for the situation he's
19 caused his family to be in, to be genuine. He indicated that
20 he made choices away from this conduct prior to his arrest. I
21 don't know that that's the case, but I will accept that
22 possibility, and again, I found Mr. Campbell's statement with
23 regard to it to be genuine.

24 I read carefully the letters submitted from his family
25 members and friends and associates. He does have an employment

HBSTCAMS

1 history, which is encouraging, in terms of rehabilitation. He
2 has ties to the community and the support of his family, who
3 wrote to me and many of whom are here today. I think these are
4 also important factors because they suggest a level of optimism
5 with regard to his chances for rehabilitation. I take all of
6 these factors into account.

7 I will also sentence to avoid unwarranted sentence
8 disparities. I have worked hard to try to avoid sentence
9 disparities in this case. Every sentencing is individualized
10 determination, but I do my best to assess relative culpability
11 within the overall conspiracy as charged in the indictment
12 here, as well as generally seeking to avoid unwarranted
13 sentence disparities among defendants with similar records who
14 have engaged in similar conduct.

15 In sum, I have no doubt, as I said, that a very
16 substantial sentence is warranted for the reasons I have
17 indicated. But I am going to vary somewhat below the guideline
18 range in lights of the factors that I have just discussed.

19 Mr. Campbell, I will now state the sentence I intend
20 to impose.

21 It is the judgment of this Court that you be sentenced
22 to a period of 96 months, to be followed by a period of three
23 years of supervised release.

24 During your term of supervised release, the standard
25 conditions of supervision shall apply, and those are outlined

HBSTCAMS

1 on pages 33 through 34 of the PSR.

2 In addition, you will be subject to the following
3 mandatory conditions: You must not commit another federal,
4 state or local crime.

5 You must not unlawfully possess a controlled
6 substance. I will suspend the mandatory drug testing condition
7 because I will impose a special condition regarding drug
8 treatment and testing.

9 You must cooperate in the collection of DNA as
10 directed by the probation officer.

11 And in addition to the standard conditions and those
12 mandatory conditions, the following special conditions shall
13 apply: You will participate in an outpatient treatment program
14 approved by the United States Probation Office, which may
15 include testing to determine whether you have reverted to using
16 drugs or alcohol.

17 You must submit your person, residence, place of
18 business, vehicle or any property or electronic devices under
19 your control to a search on the basis that the probation
20 officer has reasonable suspicion that contraband or evidence of
21 a violation of conditions of supervised release may be found.

22 You will participate in an educational or vocational
23 services program and abide by the rules and regulations of that
24 program. This may include high school equivalency education,
25 job readiness training skills, development training, and other

HBSTCAMS

1 classes related to skills and employment.

2 I do recommend that you be supervised in your district
3 of residence. I waive the fine because I don't believe you
4 have the ability to pay a fine. I am imposing a mandatory
5 special assessment of \$100, which shall be due immediately.

6 Does either counsel know of any legal reason why the
7 sentence should not be imposed as stated?

8 MR. SCOTTEN: No, your Honor.

9 MR. KORIBANICS: I do not, Judge.

10 THE COURT: The sentence as stated is imposed. I find
11 that the sentence is sufficient but no greater than necessary
12 to satisfy the sentencing purposes that I described earlier.

13 Mr. Campbell, when you are released on supervised
14 release you will have the guidance and support of the probation
15 department. As you reestablish your day-to-day life during
16 your period of supervised release, I urge you to take advantage
17 of those resources, as the people in probation are committed to
18 helping you succeed. That said, I have to caution you, you
19 must comply strictly with all of the conditions of your
20 supervised release. If you are brought back before me for a
21 violation of those conditions, I may sentence you to another
22 term of imprisonment, and I hope and expect you won't put me to
23 that decision.

24 Mr. Koribanics, any requests regarding designation or
25 the like?

HBSTCAMS

1 MR. KORIBANICS: Judge, I ask the Court to designate
2 him as close to his family as possible.

3 THE COURT: They're in the New York City area?

4 MR. KORIBANICS: They're in the Bronx.

5 THE COURT: I recommend to the Bureau of Prisons that
6 Mr. Campbell be considered for placement in a facility as close
7 to the New York City area as possible in order to facilitate
8 maintenance of ties with his family.

9 Any other requests, Mr. Koribanics?

10 MR. KORIBANICS: No, Judge.

11 THE COURT: Mr. Scotten, any remaining counts or
12 underlying indictments that need to be dismissed?

13 MR. SCOTTEN: Yes, your Honor, the government moves to
14 dismiss all open counts against the defendant.

15 THE COURT: The motion is granted. They are the
16 dismissed.

17 Mr. Campbell, I will inform you of appellate rights.
18 To the extent you have not given up your right to appeal your
19 conviction and your sentence through your plea of guilty and
20 the agreement that you entered into with the government in
21 connection with that plea, you have the right to appeal. If
22 you're unable to pay the cost of an appeal, you may apply for
23 leave to appeal in forma pauper, meaning you don't have pay a
24 filing fee. The notice appeal must be filed within 14 days of
25 the judgment of conviction.

HBSTCAMS

1 Counsel, anything else that I can address at this
2 time?

3 MR. SCOTTEN: Not from the government. Thank you,
4 your Honor.

5 MR. KORIBANICS: Not from the defense, your Honor.

6 THE COURT: Mr. Campbell, good luck to you, sir.
7 We're adjourned.

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